GENERAL COUNSEL

FEB 21 1986

Director, Office of Management and Budget
Executive Office of the President
Washington, D.C. 20530

Attention: Assistant Director for Legislative Reference

Dear Sir:

This responds to your request for the views of the Department of the Treasury on the CIA draft bill, "Intelligence Authorization Act for Fiscal Year 1987."

Section 602 provides that upon a finding that a taxpayer is a foreign power, or an agent of a foreign power, section 602 would allow the Attorney General or his designee to request taxpayer returns and return information from the Internal Revenue Service. The FBI would have access to those tax returns and return information for counterintelligence investigations and for other "counterintelligence" purposes. The FBI would also be permitted to redisclose such information to other member agencies of the intelligence community.

We are concerned with section 602 for the following reasons:

-- there is no demonstrated need for the return or return information.

-- current law appears adequate to permit acccess to the requested information. The section creates a unique and novel access provision for the FBI. Current law requires that agencies desiring taxpayer returns and return information for use in nontax criminal investigations must secure an ex parte court order granting such disclosure pursuant to section 6103(i)(1) of the Internal Revenue Code (IRC). The CIA proposal would relieve the FBI of the requirement to secure tax information for nontax investigative purposes (criminal or otherwise) through the courts.

-- the authorized use of the tax information disclosed to the FBI may be overly broad. The CIA indicates that this information would be used in many different ways, including the tracking of certain foreign students who are sponsored by foreign governments.

-- the relatively unrestricted ability of the FBI to redisclose this information to other agencies may compromise the confidentiality of such information.

The expansive access to returns and return information proposed by the CIA may seriously erode the long established expectation by taxpayers, embodied in IRC section 6103, that tax returns and return information will remain confidential and, except in warranted situations, that such information will not be redisclosed outside the IRS. We especially believe that any disclosure of tax information to the FBI (and eventually to the CIA) for counterintelligence purposes should be carefully considered. Public fears of government intrusion into the private affairs of individual citizens, such as domestic surveillance activities by the CIA, are certain to arise and such concerns should be taken into account.

Title VIII of the proposed bill generally restricts a former intelligence community employee from assisting designated foreign powers for a period of two years after leaving the Government and that administration of this restriction rests solely with the intelligence community agencies. We understand that the CIA has revised, or is thinking about revising, title VIII to make that authority nonreviewable by the courts.

We note that the legislation gives an agency head nonreviewable authority, enforceable by criminal sanctions, to dictate for a period of two years whether a former employee can provide any assistance - no matter how indirect or attenuated - to a designated foreign power. The definitions of agencies and employees covered, and subsequent activities proscribed, are broad.

There is no provision in title VIII governing circumstances where a former employee establishes a relationship with a foreign power that subsequently becomes proscribed. A former employee could be confronted with a situation where he must break a contractual relationship, and suffer the attendant liability, in order to avoid criminal liability.

The enforceability of title VIII will be dictated by the success of the implementing regulations in narrowing the proscribed conduct so that it can be readily identified. We suggest that the courts may not react favorably to the broad prohibition on post-employment activity that this statutory language imposes, without a more compelling justification for its imposition.

While we do not object to the motivation behind title VIII, we strongly suggest that the degree and nature of the activity to be proscribed be better defined in order to counter the policy objections we can anticipate regarding its scope and coverage and to enhance the justification for making this criminal violation necessary.

Sincerely,

Robert M. Kimmitt
General Counsel